Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Contempt Petition No. 94 of 2002

Jaswant Singh ……. Petitioner

Versus

P.K. Mohanti,
Secretary, Department of Urban
Development /Director Local Bodies,
Government of Uttaranchal
Dehradun & others …….. Opposite Parties

Mr. B.S. Khanka, learned counsel for the petitioner.
Mr. Sandeep Tandon, learned counsel for respondent Nos. 2 & 3.
Mr. N.C. Gupta, learned Standing Counsel for respondent No. 1.

Hon'ble Prafulla C. Pant, J.

This civil contempt petition has been moved, under Section 12 of the Contempt of Courts Act, 1971 complaining the wilful disobedience of the judgment and order dated 22.08.2001 passed in writ petition No. 3944 of 2001 and order dated 26.09.2001 passed in review application No. 2887 of 2001.

2) Heard learned counsel for parties and peruse the affidavit, counter affidavit and rejoinder affidavit filed by the parties.

3) It appears that the petitioner filed writ petition No. 25249 of 1996 before the Allahabad High Court. The said writ petition on its transfer to High Court of Uttaranchal was renumbered as 3944 (S/S) of 2001 which was disposed of finally on 22.08.2001 with the following order:

> *"Since the petitioner has completed 60 years of age, the petition has been rendered infructuous.*

However, the respondents are directed to clear all the pensionary benefits of the petitioner in accordance with rules and shall also pay the salary for the last two years during which period he has served the department in view of the interim order dated 12.08.1996 passed by the High Court.

In view of the above observations, the writ petition is disposed of finally."

Sd/- P.C. Verma, J.

It appears that a review application No. 2887 of 2001 was also filed against the said order but the same was disposed of with the following order on 26.09.2001:

"Heard learned counsel for the applicant / respondent No. 3.

No good ground is made out t review the order dated 22.08.2001 that "the salary shall be paid to the petitioner for the last two years during which period he has served the department", therefore, the review petition is dismissed."

Sd/- P.C. Verma, J.

4) Opposite party No. 1 in its counter affidavit has submitted that the petitioner was a peon in Nagar Palika Parishad, Khatima. In compliance of the aforesaid order dated 26.09.2001 passed in review petition, and order dated 22.08.2001 passed in the writ petition, the opposite party No. 1 as soon as it received notice immediately directed the Executive Officer, Nagar Palika Parishad, Khatima to comply the orders passed by the Hon'ble Court. There was nothing more to be done on the part of the

opposite party No. 1 in this regard but still the opposite party No. 1 has sought unconditional apology on his part.

5) In the counter affidavit of the opposite party Nos. 2 and 3, it has been stated that they have high regards for the Court and the Court's order. It is further stated that the petitioner himself opted his retirement at the age of 58 years vide his option dated 16.05.1990 of getting benefit of the Notifications of 1989 and 1990. Since it was the petitioner's option to retire at the age of 58 years to take financial benefits in the year 1990, he cannot take benefit of the order dated 12.08.1996. The question of payment of salary in compliance of the order of the Hon'ble Court arises if the petitioner had served Nagar Palika Parishad, Khatima. The petitioner did not render service for the two years i.e. after attaining the age of 58 years till he reached 60. As far as payment of pensionary benefit is concerned, the opposite party No. 2 and 3 have paid the amount relating to Group Insurance on 25.01.2000 vide cheque No. 760032, and Rs. 19,000/- as Provident Fund has been paid separately. Apart from that, arrears due to him has been paid vide cheque No. 019460 on 14.06.1999 and vide cheque Nos. 753349 & 915138 on 15.12.1999 and 24.06.2000 respectively. Not only this the bonus due has also been paid in cash to the petitioner. It is further stated in the counter affidavits that since the petitioner joined the department at the age of 39 years on 01.11.1977 (date of birth 15.08.1938) and stood retired on 31.08.1996 at the age of 58 years, therefore, his services were only for 19 years and it was not pensionable.

6) in view of the above facts and circumstances, this Court is of the view that expression "pensionary benefit" contained in the order of the Court of which disobedience has been complained, does not mean that the respondents are liable to make the payment of pension if the length of service rendered by the

petitioner was not pensionable. As far as post retiremental benefits are concerned it is not denied to the petitioner if the Provident Fund and the amount of Group Insurance has not been paid to him. The pension is payable only when the petitioner has completed particular length of service. Learned counsel for the petitioner could not show me the provisions if his total length of service was such which made him entitled to the pension. As far as the salary of the period of the two years is concerned, it is clear from the Court's order quoted above that it was to be paid for the period for which he has rendered service. Learned counsel for the respondents has submitted that after obtaining the stay order he has not served the department after the age of 58 years. As such, he is not entitled to the salary for the period as he has not rendered service. It is nowhere mentioned either in the order dated 22.08.2001 passed in writ petition No. 3944 (S/S) of 2001 nor in the order dated 26.09.2001 passed in review application No. 2887 of 2001, if the petitioner is to be paid salary even if he has not served the department.

7) In the facts and circumstances and in view of the above discussion, this Court is of the view that it cannot be said if either of the opposite parties have committed any wilful disobedience of the Court's order as complained in the contempt petition. Accordingly, the civil contempt petition is dismissed. Notices are discharged.

(Prafulla C. Pant, J.)

Dt.: 30th October, 2004

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